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## Eminent Domain--The Right of Precondemnation Entry--State Ex Rel. Rhodes v. Crouch

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# EMINENT DOMAIN—THE RIGHT OF PRECONDEMNATION ENTRY

*State ex rel. Rhodes v. Crouch*<sup>1</sup>

Traditionally, most Missouri condemnors obtained the right to enter on land, prior to any condemnation proceeding, by statute. The Missouri Supreme Court, however, recently determined that a rural electric cooperative has a common law right to enter land prior to condemnation for the purpose of surveying.

The case arose when KAMO,<sup>2</sup> a rural electric cooperative serving southwest Missouri, sought to construct a transmission line across northern Christian County.<sup>3</sup> KAMO's plan was first to determine the route of the transmission line by surveying a seven-foot-wide path across the county, then to obtain the necessary easements from local landowners, either by voluntary conveyance or by exercising its statutory power of condemnation.<sup>4</sup>

Most landowners granted KAMO's surveying crew permission to enter, but several denied entry. KAMO obtained a temporary injunction from the Christian County Circuit Court, ordering the defendant landowners to allow KAMO entry to conduct the survey.<sup>5</sup> The landowners, contending that KAMO was a trespasser, obtained a writ of prohibition from the Missouri Court of Appeals for the Southern District vacating the temporary injunction.<sup>6</sup> The court of appeals held that KAMO had no right to a precondemnation entry since there was no express authority.<sup>7</sup> The Missouri Supreme Court transferred the case and, in a 5-2 decision,<sup>8</sup> quashed the writ of prohibition and reinstated the temporary injunction.<sup>9</sup>

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1. 621 S.W.2d 47 (Mo. En Banc 1981).

2. KAMO Electric Cooperative is an Oklahoma rural electric cooperative authorized to do business in Missouri. Brief for Respondent at 1, *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47 (Mo. En Banc 1981).

3. 621 S.W.2d at 48.

4. Brief for Respondent at 1, *State ex rel. Rhodes v. Crouch*, No. 11812 (Mo. App., S.D. Nov. 21, 1980). The legislature granted rural electric cooperatives the power of eminent domain by MO. REV. STAT. § 394.080(11) (1978). *See also* MO. REV. STAT. § 523.010 (1978) (procedure governing condemnation).

5. Brief for Respondent at 1, *State ex rel. Rhodes v. Crouch*, No. 11812 (Mo. App., S.D. Nov. 21, 1980).

6. 621 S.W.2d at 47. The named parties in the prohibition action were landowner Florence Rhodes and the Honorable Clifford Crouch, Judge of the Circuit Court of Christian County, Missouri.

7. *State ex rel. Rhodes v. Crouch*, No. 11812, slip op. at 6 (Mo. App., S.D. Nov. 21, 1980).

8. Justices Seiler and Rendlen dissented.

9. 621 S.W.2d at 49.

Although the statute granting KAMO the power of eminent domain does not expressly confer the right of precondemnation entry<sup>10</sup> on rural electric cooperatives, the supreme court found that such an entry for surveying purposes "is a part of eminent domain."<sup>11</sup> This result was reached through a limited analysis which focused solely on KAMO's needs. The court noted that a petition initiating a condemnation proceeding must include a description of the property sought,<sup>12</sup> and that recent decisions<sup>13</sup> require this description to be in the form of "'metes and bounds, referenced by Congressional Section Courses, recorded plats, or fixed and readily ascertainable monuments.'"<sup>14</sup> The court believed that such a description could be obtained only by a survey, and therefore the legislative grant of the power of eminent domain necessarily must have included the right to a precondemnation entry for a survey. The court concluded that the legislative grant of eminent domain power without the means to use it would be senseless.<sup>15</sup>

This analysis, however, fails to recognize and weigh the competing interests involved. The landowner has a considerable interest in the quiet possession of his land, free from any intrusion, which should not be lightly overlooked. Furthermore, the rural electric cooperative's customers, who will eventually pay the expenses of condemnation in the form of higher rates, have an interest in efficient condemnation. These significant interests deserve balancing when addressing a condemnor's right of precondemnation entry.<sup>16</sup>

Despite its conclusory analysis, the *Rhodes* decision did clarify an ambiguity in the legislature's treatment of condemnors. Procedurally, the legislature has treated condemnors uniformly by requiring that all condemnation petitions include a description of the property sought.<sup>17</sup> However, the legislature has not acted uniformly in allocating the means of obtaining

10. Neither MO. REV. STAT. § 394.080(11) (1978) nor *id.* § 523.010 mention the right of a precondemnation entry.

11. 621 S.W.2d at 48.

12. *Id.* See generally MO. REV. STAT. § 523.010 (1978); MO. R. CIV. P. 86.04.

13. See, e.g., *State ex rel. Morton v. Allison*, 365 S.W.2d 563 (Mo. En Banc 1963).

14. 621 S.W.2d at 48 (quoting *State ex rel. Morton v. Allison*, 365 S.W.2d at 565).

15. 621 S.W.2d at 49.

16. These competing interests were recognized in *Indiana & Mich. Elec. Co. v. Stevenson*, 173 Ind. App. 329, 363 N.E.2d 1254 (1977):

We are thus faced with the unenviable task of reconciling two important and oftentimes competing interests. On the one hand we have the interest of the landowner to be secure in the ownership and possession of his property; on the other hand, we have the interest of society as a whole who in our technologically advanced civilization have become accustomed at the mere flick of a switch to be provided with a valuable source of energy—*electricity*.

*Id.* at 333, 363 N.E.2d at 1259.

17. See MO. REV. STAT. § 523.010 (1978).

the description; only a few condemnors have been granted the right of a precondemnation entry for a survey.<sup>18</sup> The resulting ambiguity left open to question whether the legislature intended these express grants to be exclusive. The *Rhodes* court resolved the matter by finding that a grant of the right of precondemnation entry to some condemnors did not indicate an intent to deny the right to rural electric cooperatives.<sup>19</sup>

Courts of other states do not agree on whether a condemnor has an inherent right to a precondemnation entry for surveying purposes. Although a clear majority hold that such an entry is a necessary incident of condemnation, this usually has occurred when there was also a statutory right of precondemnation entry.<sup>20</sup> Prior to *Rhodes*, only one court had held expli-

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18. See *id.* §§ 227.120(13) (highway commission); 388.210(1) (railroads); 392.100 (telephone and telegraph companies); 393.020 (corporations laying and constructing underground water mains). Cf. *id.* § 393.430 (gas storage company may obtain temporary license by condemnation for drilling test holes or wells).

19. 621 S.W.2d at 48-49.

20. See *Kincaid v. United States*, 35 F.2d 235, 244-47 (5th Cir. 1929) (federal engineers could enter and survey private property under Flood Control Act), *rev'd on other grounds*, 285 U.S. 95 (1932); *Alabama Power Co. v. Thompson*, 250 Ala. 7, 9, 32 So. 2d 795, 797 (1947) (public utility's entry and survey authorized by statute); *Alabama Interstate Power Co. v. Mt. Vernon-Woodberry Cotton Duck Co.*, 186 Ala. 622, 650, 65 So. 287, 295 (1913) (power company entitled to precondemnation entry under statute applicable to all condemnors); *Fox v. Western P. R.R.*, 31 Cal. 538, 544 (1867) (railroad had statutory right to enter private property prior to payment of condemnation award); *Montebello Unified School Dist. v. Keay*, 55 Cal. App. 2d 839, 841, 131 P.2d 384, 386 (1942) (statute gave all condemnors right of precondemnation entry); *Chambers v. Cincinnati & Ga. R.R.*, 69 Ga. 320, 321-22 (1882) (railroad had right of precondemnation entry under corporate charter granted by legislature); *Young v. McKenzie*, 3 Ga. 31, 39-40 (1847) (legislative act gave bridge company power to erect and protect bridge including right to future entries); *Mackie v. Mayor of Elkton*, 265 Md. 410, 413-14, 290 A.2d 500, 502 (1972) (statute granted engineers acting for state right of precondemnation entry); *Steuart v. Mayor of Baltimore*, 7 Md. 500, 508-09 (1855) (city had statutory right of precondemnation entry for survey); *Town of Carlisle v. Department of Pub. Utils.*, 353 Mass. 722, 723, 234 N.E.2d 752, 753 (1968) (gas company had statutory right of precondemnation entry to survey pipeline route); *Brigham v. Edmonds*, 73 Mass. (7 Gray) 359, 363 (1856) (dicta recognizing right of railroads to momentary entry for surveying purposes); *Winslow v. Gifford*, 60 Mass. (6 Cush.) 327, 328 (1850) (statute requiring boundaries of town landing places to be ascertained included right of precondemnation entry); *Mississippi State Highway Comm'n v. Ratcliffe*, 251 Miss. 785, 788, 171 So. 2d 356, 357 (1965) (statute authorized highway commission employees to enter for land appraisal); *Wood v. Mississippi Power Co.*, 245 Miss. 103, 114, 146 So. 2d 546, 550 (1962) (electric corporation had right of precondemnation entry for survey under statute authorizing such entries by all condemnors); *State Highway Comm'n v. District Court*, 147 Mont. 348, 360, 412 P.2d 832, 835 (1966) (highway commission had right to enter and inspect land under discovery rule); *Orr v. Quimby*, 54 N.H. 590, 591 (1874) (federal statute authorized entry for surveying coast line); *Zobel v. Public*

citly that a condemnor has the right to a precondemnation entry absent a statutory grant of authority. In *Thomas v. City of Horse Cave*,<sup>21</sup> the Kentucky Supreme Court stated that condemnation probably would be impossible without the right to a precondemnation entry and survey. Noting that the legislature had granted a right of precondemnation entry to some condemnors, the court found that there was no reason to deny the right to the condemnor in question.<sup>22</sup> *Thomas* has been criticized, however, for relying on cases in which there was an express statutory grant of the right of precondemnation entry.<sup>23</sup> Other courts have found the landowner's interest in the quiet possession of his property a sufficient reason for precluding a precondemnation entry when the legislature has not expressly conferred that right on the condemnor.<sup>24</sup>

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Serv. Co., 75 N.M. 22, 23, 399 P.2d 922, 923 (1965) (statute gave electric corporation right of precondemnation entry for surveying route of transmission line); Northville Dock Pipe Line Corp. v. Fanning, 21 N.Y.2d 616, 618, 237 N.E.2d 220, 221, 289 N.Y.S.2d 963, 965 (1968) (statute gave pipe line corporation right of precondemnation entry to survey most advantageous route); Square Butte Elec. Coop. v. Dohn, 219 N.W.2d 877, 881 (N.D. 1974) (electric cooperative had statutory right to enter and examine land for future condemnation); Hicks v. Texas Mun. Power Agency, 548 S.W.2d 949, 955 (Tex. Civ. App. 1977) (statute authorizing railroads to enter for survey applied to electric corporation building railroad spur); Puryear v. Red River Auth., 383 S.W.2d 818, 820-21 (Tex. Civ. App. 1964) (statutory right of precondemnation entry included right to conduct core drilling operations); Lewis v. Texas Power & Light Co., 276 S.W.2d 950, 954 (Tex. Civ. App. 1955) (public utility had statutory right of precondemnation entry). See also 26 AM. JUR. 2D *Eminent Domain* § 168 (1966).

21. 249 Ky. 713, 61 S.W.2d 601 (1933).

22. *Id.* at 721-22, 61 S.W.2d at 604. In *Thomas*, the city council of Horse Cave, Kentucky, gave the condemnor a franchise to provide the city with a water system. Under state statutes, that franchise included the power of eminent domain. The condemnor found it necessary to survey and explore Thomas's land for a water source. When Thomas interfered with the entry, the condemnor obtained an injunction against Thomas, enjoining him from further interference. *Id.* at 715-16, 61 S.W.2d at 602. In upholding that injunction, the Kentucky Supreme Court relied on cases in which a specific statute had authorized the entry, such as *Fox v. Western P. R.R.*, 31 Cal. 538 (1867). 249 Ky. at 721, 61 S.W.2d at 604.

23. See *Iowa State Highway Comm'n. v. Hipp*, 259 Iowa 1082, 1086-87, 147 N.W.2d 195, 197-98 (1966) (specifically rejecting *Thomas*; highway engineers entering private property for survey would be trespassers absent statute granting precondemnation entry);

24. See, e.g., *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 464-65, 565 S.W.2d 433, 434-35 (1978), in which the court found that the Game and Fish Commission did not have the right to a precondemnation entry and survey absent statutory authority. The court stated that such an entry would be "a use of land inconsistent with the landowner's right to control and enjoy his property in fee simply [sic] absolute" and would constitute a taking. *Id.* at 466, 565 S.W.2d at 435. See also *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912) (entry for surveying purposes prior to condemnation and pursuant to statute constituted trespass).

In subordinating the condemnor's interest to that of the landowner, the courts denying entry have failed to adequately resolve the condemnor's dilemma: how to carry on condemnation without the required information that an entry and survey provides.<sup>25</sup> To its credit, the dissent in *Rhodes* suggested an alternative method for KAMO to obtain an adequate property description.<sup>26</sup> The initial premise of the dissent's proposal was that Missouri law does not mandate that a description be obtained only by survey.<sup>27</sup> On

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25. See, e.g., *Robinson v. Arkansas Game & Fish Comm'n*, 263 Ark. 462, 466, 565 S.W.2d 433, 435 (1978) (condemnor should follow statutory procedure for condemning temporary easement for conducting survey). Cf. *Iowa State Highway Comm'n v. Hipp*, 259 Iowa 1082, 1089, 147 N.W.2d 195, 199 (1966) (problem properly one for legislature to address). Prior to the *Rhodes* decision, attorneys representing Missouri rural electric cooperatives in condemnation proceedings were forced to try a variety of methods to obtain the requisite property description. This was particularly true in southern Missouri where, due to the rough terrain of the Ozarks, the condemnor's surveying crew could not obtain a line of sight across land which they were prevented from entering. In such instances, the condemnor, knowing where its project would enter and leave the land, would simply estimate the description of a straight line and file its petition. The landowner sometimes responded by complaining that the condemnor would be destroying favored property, such as trees or a natural spring. The condemnor would then have some leverage, negotiating an entry in exchange for adjusting the route of the project. Telephone interview with attorney Gregory C. Stockard (June 10, 1982).

26. 621 S.W.2d at 49-50 (Seiler, J., dissenting). In several statements, the dissent reacted to its concern that the entry would be unsupervised:

If rural electric cooperatives desire that a landowner's rights be subject to their opening his land to their survey teams whenever the utility sees fit, sans leave from anyone, the utility should obtain this right from the general assembly, by express provision, as has been done by the highway commission, the railroads and the water companies. This court has no mandate to give rural electric utilities a license to enter upon people's land.

. . . .

In considering this issue, it is necessary to keep in mind that by its position KAMO seeks to establish a power to enter private property in the absence of a court order and without judicial supervision.

*Id.* at 49 (Seiler, J., dissenting).

27. *Id.* at 50 (Seiler, J., dissenting). In *State ex rel. Morton v. Allison*, 365 S.W.2d 563 (Mo. En Banc 1963), the court dealt with a landowner's claim that the condemnor was re-instigating condemnation proceedings against the same property within two years in violation of MO. R. CIV. P. 86.06. The condemnor's defense was that the property was so vaguely described in the first action that the court did not acquire jurisdiction. The court held that the description in the first action was sufficient to confer jurisdiction, but noted in dicta that " 'the statute and the rule contemplate that the condemnor shall describe the land and rights with such particularity that the owner can, without too much difficulty, ascertain exactly what is being taken.' " 365 S.W.2d at 565 (emphasis in original) (quoting *State ex rel. Morton v. Allison*, 357 S.W.2d 733, 735-36 (Mo. App., Spr. 1962)). Thus, the rule that the description be by metes and bounds originally was designed to protect the landowner in instances where the condemnor, unhappy with the result of the first

the contrary, KAMO could obtain a general description of the land from existing public records and use that information to file its condemnation petition.<sup>28</sup> Once the action was under way, KAMO then could be granted leave to survey and amend its petition, narrowing the description to the exact property needed.<sup>29</sup> This method, while less convenient, gives both recognition and protection for the landowner's interests by providing some court supervision of the entry.<sup>30</sup>

Although *Rhodes* settles the issue of a rural electric cooperative's right to a precondemnation entry for surveying purposes in Missouri, several questions remain unanswered. The court did not specify whether this decision applies to other condemnors who do not have statutory rights of precondemnation entry.<sup>31</sup> The court did not indicate that its holding was limited only to rural electric cooperatives.<sup>32</sup> Natural gas companies, for example, have

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condemnation proceeding, tried again within two years. *See State ex rel. State Highway Comm'n v. Polk*, 459 S.W.2d 346, 349 (Mo. 1970). If the *Morton* rule was intended to protect the landowner, not to make surveys a requisite of condemnation, then the dissent's position in *Rhodes* is entirely consistent with *Morton*.

28. In listing the available public records, the dissent emphasized that the United States Department of Agriculture makes aerial photographs of every county in Missouri and these are available to the general public. 621 S.W.2d at 50 (Seiler, J., dissenting). Such technological advances raise some question as to whether the majority in *Rhodes* justifiably can infer the right of precondemnation entry for surveying purposes on grounds of necessity alone. *See generally* notes 10-15 and accompanying text *supra*.

29. The dissent's suggestion that the condemnor should be given leave to amend its petition after a survey is supported by those cases which note that a denial of such a motion is an abuse of discretion where the result would mean the condemnor taking more land than it desired. *See generally State ex rel. State Highway Comm'n v. Blue Ridge Baptist Temple, Inc.*, 591 S.W.2d 248, 250 (Mo. App., W.D. 1979); *State ex rel. State Highway Comm'n v. Esther, Inc.*, 579 S.W.2d 155, 158 (Mo. App., S.D. 1979); *Jackson County v. Hall*, 558 S.W.2d 791 (Mo. App., K.C. 1977); *Union Elec. Co. v. Levin*, 304 S.W.2d 478 (Mo. App., St. L. 1957).

30. While the dissent's suggested alternative seems to be an adequate compromise, it does contain some drawbacks. For example, it does not promote efficient condemnation or judicial economy. It is entirely foreseeable that the condemnor will not be able to ascertain all necessary facts regarding the desirability of the land from aerial photographs and other records. One attorney in the field emphatically stated that aerial photographs would be worthless and that they do not adequately illustrate the terrain. Telephone interview with attorney Gregory C. Stockard (June 10, 1982). If the condemnor is required to initiate the proceeding blindly only to find out in the subsequent entry that the land does not suit its purposes, the condemnor will have wasted its own time and money, as well as the court's time. The public's money likewise would be wasted since this litigation expense undoubtedly would be passed on to the condemnor's customers. The result could be condemnation suits becoming a form of discovery in themselves.

31. *See* note 18 and accompanying text *supra*.

32. On the contrary, the court used the following broad language:

[P]re-condemnation surveying is not only necessary to the exercise of the

been granted the power to condemn property required for laying pipelines, but the legislature has not expressly granted them the right of precondemnation entry.<sup>33</sup> The broad language of *Rhodes* indicates that gas companies also would be entitled to such an entry.<sup>34</sup>

The court in *Rhodes* also did not indicate whether there should be any limitations on this inherent right. The Missouri legislature has recognized, whenever it has granted the right of precondemnation entry,<sup>35</sup> that a condemnor should be liable for any actual damage to the property caused by an entry. A condemnor whose right is provided by *Rhodes* also should be liable for any actual damage to the property caused by the entry.<sup>36</sup> Other limita-

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right of eminent domain, it is a part of eminent domain. The right of eminent domain is virtually useless to an entity without the right to survey, and that right must be available before the beginning of condemnation proceedings.

...  
... The existence of the referenced grants [by the legislature to other condemnors] does not preclude a determination that eminent domain includes the right to survey in anticipation of and preparation for condemnation.

621 S.W.2d at 48-49 (footnote omitted).

33. See MO. REV. STAT. § 393.430 (1978). See also *id.* § 523.010 (sets out procedure to be followed in all condemnations).

34. See note 32 *supra*.

35. See, e.g., MO. REV. STAT. § 388.210(1) (1978) (creating railroad right of precondemnation entry and liability for damage caused by entry).

36. The court in *Rhodes* did not address the question of whether the landowner is entitled to reimbursement for any physical injury to the property caused by the entry. Such injury is not always trivial and may include cutting trees in order to obtain the necessary line of sight in a lineal survey. See, e.g., *Indiana & Mich. Elec. Co. v. Stevenson*, 173 Ind. App. 329, 363 N.E.2d 1254 (1977). In *Stevenson*, a public utility's survey crew entered Stevenson's land, under authority of a statute, to survey the route of a proposed transmission line. Finding that their line of sight was obstructed, the surveying crew cut down 23 saplings and trees on Stevenson's property. They also cut an 1800-foot path through a neighbor's ten-foot-high corn. The court stated that a "public utility's right to enter private property for the purpose of examination and survey confers no license to engage in a course of destruction of crops, [and] timber," and affirmed the judgment for actual and punitive damages. *Id.* at 334, 342, 363 N.E.2d at 1259, 1263.

In addressing the question of whether the condemnor should be liable for damages caused by the survey, it should be noted that the subsequent condemnation award usually does not include damages caused by precondemnation activity. See *KAMO Elec. Coop. v. Baker*, 287 S.W.2d 858 (Mo. 1956); *Powers v. Hurmert*, 51 Mo. 136 (1872); *Walther v. Warner*, 25 Mo. 277 (1857). See generally Niedner, *Compensable Items in Condemnation Proceedings*, 21 J. MO. B. 114 (1965); Annot., 33 A.L.R.3d 1132 (1970). The landowner has a variety of remedies including trespass, statutory actions, or inverse condemnation claims. See Note, *Eminent Domain—Rights and Remedies of an Uncompensated Landowner*, 1962 WASH. U.L.Q. 210, 225-42.

*Rhodes* presents an obstacle to a trespass claim. Since the entry is, in effect, under



tions may be necessary to protect the landowner's interest in the quiet possession of his property. Some reasonable limitations would include requiring the condemnor to exercise his right of entry at a reasonable time of day and to give some advance notice of the entry.

These unresolved issues could be settled by legislation governing precondemnation entries. Sections 301 and 305 of the Uniform Eminent Domain Code (UEDC)<sup>37</sup> provide a model for legislation in this area.<sup>38</sup> Section 301 provides:

(a) A condemnor and its agents and employees may enter upon real property and make surveys, . . . or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the entry is:

(1) preceded by reasonable efforts to notify the owner and any other person known to be in actual physical occupancy of the property, of the time, purpose, and scope of the planned entry and activities;

(2) undertaken during reasonable daylight hours;

(3) accomplished peaceably and without inflicting substantial injury; and

(4) not in violation of any other statute.

(b) The entry and activities authorized by this section do not constitute a trespass, but the condemnor is liable under Section 305 for resulting damages.<sup>39</sup>

Since the legislation would apply to all condemnors, section 301 would settle the question of whether other condemnors are entitled to a precondemnation entry after *Rhodes*.

Section 305 of the UEDC spells out the liability of the condemnor for actual damage to the property caused by the entry. It states that the con-

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legislative authority, it is privileged and does not itself constitute a trespass. See generally RESTATEMENT (SECOND) OF TORTS § 211, comment c (1965). In order to recover in a trespass action, the landowner must prove that the condemnor acted unreasonably in exercising this privileged entry. *Id.* § 214, comment a. See also *Indiana & Mich. Elec. Co. v. Stevenson*, 173 Ind. App. 329, 335, 363 N.E.2d 1254, 1260 (1977) (expert testimony established that reasonable entry required portable towers in survey). When the condemnor commits a tortious act in exercising its right of entry, the privilege will be extinguished and the condemnor may be held a trespasser ab initio, i.e., its liability will relate back to the original entry. See 87 C.J.S. *Trespass* § 16 (1954). But see RESTATEMENT (SECOND) OF TORTS § 214, comment c (1965). Whatever the form of action, the landowner should recover all actual damages, regardless of fault.

37. 13 U.L.A. 28, 32-33 (1974).

38. Alstyn, *The Uniform Eminent Domain Code: A Beacon for Modernizing Condemnation Procedures*, 1977 INST. ON PLAN. ZONING & EMINENT DOMAIN 309, 313-14.

39. U.E.D.C. § 301, 13 U.L.A. 28 (1974).

demnors would be liable "for physical injury to, and for substantial interference with possession or use of, property caused by his entry and activities upon the property."<sup>40</sup> It further provides a procedure for the recovery of such damages, including the landowner's costs and litigation expenses if the condemnor has abused the landowner's interests while on the property.<sup>41</sup> Finally, the added limitations in section 301 that the entry be made at a reasonable time of day and be preceded by notice to the owner would prove beneficial to both the condemnor and the landowner.<sup>42</sup> The landowner would be assured that his property would not be invaded at an unreasonable hour, nor would he be rudely surprised by the entry. Landowners also could alert condemnors to areas of special concern, avoiding later confrontations and hostilities.

Regardless of whether such legislation is adopted, the decision in *Rhodes* certainly will facilitate condemnation for rural electric cooperatives. With the right to a prior entry and survey of private property, rural electric cooperatives will not have to engage blindly in condemnation proceedings.<sup>43</sup> Undoubtedly, *Rhodes* will serve as the basis for other condemnors to claim an inherent right of precondemnation entry for surveying purposes.<sup>44</sup> By enacting the pertinent sections of the UEDC, the legislature could alleviate the need for such future litigation. Such legislation would result in uniform treatment of condemnors, protection of the landowner's interests, and smoother, more efficient precondemnation entries.

KENDALL R. MCPHAIL

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40. U.E.D.C. § 305, 13 U.L.A. 32 (1974). See also Alstynne, *supra* note 38, at 313-14; Sackman, *Avoiding Double Damages and Costly Errors for the Condemnor*, 1972 INST. ON PLAN. ZONING & EMINENT DOMAIN 223, 253.

41. U.E.D.C. § 305(a), 13 U.L.A. 32 (1974) (owner may bring civil action against condemnor or, in limited situations, may apply directly to court).

42. See U.E.D.C. § 301, 13 U.L.A. 28 (1974) (reasonable attempt to notify landowner, entry to be made during daylight hours). Missouri statutes authorizing precondemnation entries by certain condemnors do not contain provisions restricting the time of the entry or requiring notice to the landowner. See statutes cited note 18 *supra*.

43. See Alstynne, *supra* note 38, at 313-14; Guittard, *Discovery and Pretrial Procedure in Eminent Domain*, 1959 INST. ON PLAN. ZONING & EMINENT DOMAIN 199, 199-205.

44. See notes 31-34 and accompanying text *supra*.